

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JON M. FELT</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 250,399
<b>MARTIN K. EBY CONSTRUCTION CO., INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>ST. PAUL FIRE &amp; MARINE INSURANCE CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appeal from a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on January 11, 2000.

**ISSUES**

This case involves a claim for bilateral upper extremity injuries that are alleged to have occurred "each and every working day through the last day worked of 11/4/99." At the preliminary hearing claimant was seeking medical treatment with George L. Lucas, M.D., as authorized medical, and temporary total disability compensation from November 11, 1999. Respondent denied claimant met with personal injury by accident on the dates alleged and denied any accidental injury arose out of the employment.

The Administrative Law Judge found claimant suffered personal injury by accident that arose out of and in the course of his employment with respondent. Judge Frobish awarded temporary total disability compensation and medical benefits with respondent to provide claimant with the names of three physicians from which to choose one as the authorized treating physician.

On appeal, respondent describes the issue as whether claimant met with personal injury by accident arising out of and in the course of his employment with respondent.

**FINDINGS OF FACT**

Claimant is a carpenter. He began working for respondent on October 12, 1999. His position with respondent involved working on a raker beam which is described as "a huge steel form that is bolted together." Claimant described his job duties as pulling hard

on a spud bar to line up the holes and then using an electric impact wrench to tighten the bolts. This involved gripping and pushing with both hands. Claimant is right handed but because of the awkward positions he used both hands about equally.

Claimant was symptom free when he started working for respondent. He did not experience any pain to any part of his body until on or about November 2, 1999. Claimant describes the onset of pain being in his left hand and wrist. Sometime thereafter, he started having symptoms in his right hand. Claimant attributes the onset of symptoms in his right hand in part to the prescription of a brace that limited the use of his left hand.

Claimant was initially seen by Dr. Michelle Louis who referred him to Dr. Lucas, an orthopedic surgeon. Dr. Lucas first saw claimant on November 15, 1999. At that time claimant's complaints were only in his left upper extremity. Dr. Lucas diagnosed early and acute carpal tunnel syndrome. Claimant described his symptoms as work related, but Dr. Lucas did not give an opinion as to whether or not claimant's condition was work related. Claimant was released to return to work "when he felt that he could handle it."

#### CONCLUSIONS OF LAW

In general, the Kansas Workers Compensation Act requires employers to compensate employees for personal injuries or aggravations of preexisting injuries incurred through accidents arising out of and in the course of employment. K.S.A. 1999 Supp. 44-501(a); Kindel v. Ferco Rental, Inc., 258 Kan. 272, Syl. ¶ 2, 899 P.2d 1058 (1995); Baxter v. L.T. Walls Constr. Co., 241 Kan. 588, 738 P.2d 445 (1987). The question of whether there has been an accidental injury arising out of and in the course of employment is a question of fact. Harris v. Bethany Medical Center, 21 Kan. App. 2d 804, 909 P.2d 657 (1995). The question of whether an aggravation of a preexisting condition is compensable under workers compensation turns on whether claimant's work activity aggravated, accelerated or intensified the disease or affliction. Boutwell v. Domino's Pizza, 25 Kan. App. 2d 100, 121, 959 P.2d 469, *rev. denied* 265 Kan. \_\_\_\_ (1998).

Claimant described the onset of symptoms in his left hand as occurring at work. Although the right hand symptoms developed later, he likewise attributes his right sided symptoms to his work with respondent. Clearly, claimant's job duties involved repetitive and hand intensive work. No medical testimony refutes claimant's assertion that his injuries are work related. The Appeals Board finds that claimant's right upper extremity condition is the result of overuse caused by a combination of performing work and by subsequently performing his normal day to day activities in a manner to protect his painful left upper extremity. The right upper extremity condition, therefore, likewise arose out of and in the course of his employment with respondent and claimant is entitled to treatment for this condition as well.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the January 11, 2000, Order entered by Administrative Law Judge Jon L. Frobish should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2000.

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BOARD MEMBER

c: Phillip B. Slape, Wichita, KS  
Gregory D. Worth, Lenexa, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director